

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Commonwealth Edison Company)

Docket No. EC00-98-000

COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211, the Illinois Commerce Commission ("ICC") hereby submits its Comments in the above-captioned proceeding.

I. Background

On May 31, 2000, Commonwealth Edison Company ("ComEd") submitted an Application for authorization to transfer certain jurisdictional assets to an affiliated generating and wholesale marketing company, referred to in the Application as "Genco," pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. §824b. Among these assets are two synchronous condensers at the Zion Nuclear Station. Application at 1. ComEd formerly used these synchronous condensers to generate real power. However, ComEd states that the generators are only used to provide reactive power to support voltage on ComEd's integrated transmission system at this time in an amount up to 825 megavolt-amperes, or MVars, per condenser. *Id.* at 7 (explaining that the generators have been disconnected from the turbines which converted steam to shaft horsepower during Zion's commercial operating life).

Accordingly, the Zion synchronous condensers are classified as transmission related facilities. ComEd admits this fact in its Application, stating that the Zion synchronous condensers are “transmission-related facilities” and will “perform only a transmission support function.” Id. at 3, 8. More specifically, ComEd states that the Zion synchronous condensers “perform the same function as other transmission voltage control equipment (capacitors and static var systems).” Id. at 7. Since Genco will perform generating and wholesale marketing functions, Id. at 3, Genco’s acquisition of such facilities will create a company that is engaged in generation and wholesale purchases and sales of electricity as well as one that owns facilities used for the transmission of electric energy in interstate commerce.

In Order No. 889¹, the Commission issued Standards of Conduct which apply to public utilities that own facilities used for the transmission of electric energy in interstate commerce. 18 C.F.R. § 37.1. The Commission’s Standards of Conduct in Order 889 are designed to do the following:

ensure that a public utility’s employees (or any of its affiliates’ employees) engaged in transmission system operations function independently of the public utility’s employees (or any of its affiliates’ employees) who are engaged in wholesale purchases and sales of electric energy in interstate commerce. Such separation is vital if we are to ensure that the utility does not use its access to information about transmission to unfairly benefit its own or its affiliates’ sales.

Order No. 889, Slip Op. at 12 (emphasis added). Order 889’s requirements will apply to Genco unless they are waived by the Commission.

¹ Order No. 889, Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Docket No. RM95-9-000, 75 FERC ¶61,078 (Issued April 24, 1996).

Accordingly, ComEd requests, on behalf of Genco, that the Commission waive its Order 889 Standards of Conduct. Id. at 9. ComEd asserts that “neither the physical location of the synchronous condensers inside Genco’s property, nor their ownership by Genco, will give Genco’s employees access to off-OASIS information concerning ComEd’s transmission system or to any market information that ComEd’s employees may have by virtue of ComEd being a transmission provider.” Id. at 8. ComEd bases its assertion on its own statement that despite the transfer of ownership, “ComEd will continue to control and operate the synchronous condensers,” and will retain control “by means of an exclusive and irrevocable right to and license of the synchronous condensers.” Id.

Presumably, the mechanism which ComEd intends to prevent the transfer of information is an agreement between ComEd and Genco by which ComEd will continue to control and operate the facilities. However, ComEd has not submitted such an agreement as part of its Application in this proceeding; nor, to the ICC’s knowledge, has ComEd made such an agreement available for review.² In fact, ComEd has not even explained how such an agreement would operate or effectively prevent Genco’s employees from obtaining inappropriate information. Accordingly, at this point, ComEd’s statement upon which it wants the Commission to rely in

² Section 205 of the FPA requires public utilities to file “all contracts which in any manner affect or relate to such rates, charges, classifications, and services” which are subject to the Commission’s jurisdiction. 16 U.S.C. §824d(c). In its Application, ComEd does state that “ComEd and Genco will make appropriate filings under FPA section 205 with respect to any transferred agreements.” Application at 2 n.2. However, the placement of ComEd’s reference indicates that ComEd’s commitment applies only to the “wholesale sales agreements” that ComEd plans to transfer to Genco—the commitment does not appear to apply to the filing of the Zion synchronous condenser operating and control contract.

granting a waiver to Genco of Order 889's Standards of Conduct is wholly unsupported.

II. Discussion

In a series of orders, the Commission has enunciated the standards for waiver of or exemption from some or all of the requirements of Order Nos. 888 and 889. In particular, the Commission has determined that waiver of Order 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small utility.³ ComEd argues that Genco should be granted a waiver of the Order 889 requirements based on the first of these conditions, i.e., limited and discrete transmission facilities. Application at 9.

It is the ICC's position that ComEd has not demonstrated in its Application that Genco satisfies the Commission's conditions for an Order 889 waiver. The synchronous condensers at issue in this docket provide a much more significant transmission system function than, for example, the generator step-up transformers and generation tie-lines for which the Commission previously granted Genco an Order 889 waiver on the "limited and discrete" grounds.⁴ Indeed, the Commission found that the provision of reactive supply and voltage control are so critical to the provision of transmission service that it was specifically identified in Order 888 as a transmission ancillary service and was designated as Schedule 2 to the pro forma

³ See, e.g., Black Creek Hydro, Inc., 77 FERC ¶ 61,232 at ¶ 61,941 (Nov 29, 1996).

⁴ Order Conditionally Authorizing Disposition of Jurisdictional Facilities and Corporate Reorganization, Accepting Proposed Agreements for Filing, and Granting Waiver of Certain Requirements of Order Nos. 888 and 889, PECO Energy Company, Docket No. EC00-38-000, consol., 90 FERC ¶ 61,269 (Mar. 17, 2000) ("PECO Authorization Order").

OATT. ComEd acknowledges that the Zion synchronous condensers “generate reactive power” and “support voltages on ComEd’s integrated transmission system.” Application at 7.

The effect of the Zion synchronous condensers on the transmission system is not “limited and discrete,” and Genco should not be granted an Order 889 waiver on those grounds. The Zion synchronous condensers play a major role in providing voltage support for the transmission grid in northeastern Illinois and southeastern Wisconsin. The availability of voltage support plays a major part in the availability of transmission capability in this area. Discriminatory access by Genco to information concerning the operation of the Zion synchronous condensers (for example, maintenance and outage schedules, or reactive power output levels) could provide Genco with a distinct, unearned competitive advantage over competing power sellers without such access. It would be even more damaging to markets (and to reliability) if ComEd’s operation and control agreement is inadequate to prevent Genco from having opportunities to manipulate operation of the Zion synchronous condensers in such a way as to impact transmission availability. Ultimately, discriminatory access to transmission information by Genco or an outright ability to impact the availability of transmission capacity in northeastern Illinois would severely harm Illinois’ emerging competitive retail markets.

Nevertheless, despite the ICC’s contention that ComEd has not satisfied the Commission’s expressed conditions for a waiver, the ICC is not opposed to waiver of Genco’s Order 889 requirements provided that ComEd or Genco demonstrates that appropriate protections are in place. The ICC recommends that waiver of the

Order 889 requirements otherwise applicable to Genco not be granted until it can be ascertained whether the mechanism by which Genco will permit ComEd to control and operate the Zion synchronous condensers is adequate to prevent Genco from having advantageous access to off-OASIS transmission system information and to prevent Genco from having the opportunity to manipulate the operation of the Zion synchronous condensers in such a way as to discriminatorily affect transmission capacity available to competing power sellers. In particular, the ICC suggests that ComEd be required to file or otherwise make available the contracts or other documents by which ComEd will exercise operation and control of the Zion synchronous condensers on behalf of Genco and that the Commission postpone granting a waiver of Order 889 until such time as it can be ascertained that such contracts are adequate to protect the public interest.⁵

⁵ The ICC notes that some of the transmission facilities to be transferred by PECO Energy Company (“PECO”) to Genco will be leased back to PECO, and that PECO requested and received approval from the Commission for this arrangement under Section 205 of the FPA, 16 U.S.C. §824d. PECO Authorization Order at ¶61,905. ComEd should likewise be required to file the Zion synchronous condenser operating and control agreement pursuant to Section 205 of the FPA, 16 U.S.C. §824d.

III. Conclusion and Recommendation

Wherefore, the ICC recommends that the Commission not grant waiver of the Order 889 Standards of Conduct as applicable to Genco until it can be assured that there are adequate mechanisms in place to prevent the transfer of the Zion synchronous condensers to Genco from providing Genco with discriminatory access to transmission-related information that is not available to other participants in power sales markets or with the ability to manipulate available transmission capability. In particular, the ICC requests that ComEd be required to file or otherwise make available the contracts or other documents by which ComEd will exercise operation and control of the Zion synchronous condensers on behalf of Genco, as well as any and all other appropriate relief.

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Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

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